

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFERS PATRICK DICKEY,

Plaintiff,

vs.

MARK CHURRAY,

Defendant.

No. CIV S-03-2215 MCE PAN P

ORDER AND

REVISED ORDER

RE INMATE DEPOSITIONS

BY WRITTEN QUESTIONS

Plaintiff is a state prisoner proceeding in propria persona with a civil rights action pursuant to 42 U.S.C. § 1983. On June 29, 2006, counsel for defendant filed a request for reconsideration of this court's June 14, 2006 order which stated defendant had not timely provided cross-examination questions or objections to plaintiff's proposed written questions to inmate witnesses. Defendant states that the questions and objections were inadvertently provided only to plaintiff and not filed with the court. On August 14, 2006, plaintiff submitted his direct questions for the deposition by written questions of inmate witnesses, along with defendant's cross-examination questions. (See Pl.'s August 14, 2006 filing, Docket No. 108.) Good cause appearing, defendant's request for reconsideration will be granted and the court will revise its order regarding inmate depositions by written questions.

////

1 Moreover, at least one inmate previously responded without providing his identity
2 (Docket No. 103), one inmate has provided unverified answers (Docket No. 109), Mr. Upshaw's
3 copy of the questions was returned (Docket No. 105), plaintiff allegedly provided Mr. Upshaw's
4 responses, but Mr. Upshaw failed to sign them at all (Docket No. 101), and other deponents
5 requested counsel (Docket No. 97; 103).

6 First, the court will not require Mr. Casey to respond. On June 29, 2006, inmate
7 Casey filed a response stating he was not a percipient witness and has no information to report.
8 (Docket No. 102).

9 Second, as noted in this court's August 4, 2006 order, this court has no authority
10 to appoint counsel to represent a potential witness.

11 Third, the inmate witnesses are reminded of their obligation to sign their answers
12 under penalty of perjury. It would be helpful if the inmate witness would include their name,
13 CDC number and address on the responses and write only on one side of a page.

14 The court now orders the clerk to forward a copy of the questions to the deponents
15 listed below along with a subpoena issued by the court and a copy of this order.¹ Each deponent
16 shall write out the answers to the questions on the forms provided, swear to their truthfulness,
17 and return them to the court. The clerk shall then forward copies of the answers to the parties.
18 Counsel for defendant is ordered to provide such assistance as is required within the prison to
19 effectuate this order. The deposition shall occur within thirty days from the date of this order.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 A. Defendant's June 29, 2006 request for reconsideration is granted. Defendant's
22 objections and cross-examination questions are deemed timely filed.

23 ////

24 ////

25 ¹ The Clerk of the Court is directed to plaintiff's August 14, 2006 filing, which contains
26 complete sets of questions directed to each witness.

1 B. The clerk of the court is ordered to forward the subpoena, a copy of this order,
2 and a copy of the written deposition questions (Attachments to docket no. 108) to the following
3 deponents:

4 1. Robert Upshaw (P-56186), Pleasant Valley State Prison, 24863 West Jayne
5 Avenue, P.O. Box 8500, Coalinga, CA 93210.

6 2. William Dukes (J-79876), Mule Creek State Prison, 4001 Highway 104, P.O.
7 Box 409099, Ione, CA 95640.

8 3. Travis Wood (J-67560), Pelican Bay State Prison, 5905 Lake Earl Drive, P.O.
9 Box 7000, Crescent City, CA 95531-7000.

10 4. Sherman Bell (E-89260), Pelican Bay State Prison, 5905 Lake Earl Drive, P.O.
11 Box 7000, Crescent City, CA 95531-7000.

12 5. Chris Parker (K-03486), High Desert State Prison, 475-750 Rice Canyon Road,
13 P.O. Box 750, Susanville, CA 96127-0750.

14 6. Jesse Clasby (K-46356), Pelican Bay State Prison, 5905 Lake Earl Drive, P.O.
15 Box 7000, Crescent City, CA 95531-7000.

16 7. Michael Trippe (E-61614), California State Prison at Corcoran, 4001 King
17 Avenue, P.O. Box 8800, Corcoran, CA 93212-8309.

18 C. Mr. Upshaw, Mr. Dukes, Mr. Wood, Mr. Bell, Mr. Parker, Mr. Clasby and Mr.
19 Trippe shall return the questions pursuant to subpoena to the court no later than thirty days after
20 the date of this order;

21 D. Upon receipt of the deposition answers, the clerk of the court shall forward
22 copies to the parties; and

23 /////

24 /////

25 /////

26 /////

1 E. Any redirect or recross questions will be lodged with the court within thirty
2 days of service of the answers.

3 DATED: August 21, 2006.

4
5 
6 UNITED STATES MAGISTRATE JUDGE

7 /001; dick2215.415r
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26